



1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006

Tel 202 659 6600
Fax 202 659-6699
www.eckertseamans.com

James C. Falvey
jfalvey@eckertseamans.com
Phone: 202 659-6655

May 17, 2016

Ex Parte

Confidential: Subject to the FCC's Second Protective Order

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Telephone Number Portability, *et al.*, CC Docket No. 95-116;
WC Docket Nos. 09-109 and 07-149

Dear Ms. Dortch:

The Wireless Future Program at New America's Open Technology Institute¹ and the LNP Alliance² (together, the "Parties") have completed an initial review of the iconectiv Master Service Agreement ("iconectiv MSA" or "MSA") which was made available to outside consultants and attorneys about a month ago, and only made available in a public version to LNP Alliance carriers about three weeks ago.³ Based on this initial review, the Parties have identified a number of issues that are of significance to smaller carriers and consumers and that would provide constructive improvements to the MSA before smaller carriers are required to agree to

¹ New America's Open Technology Institute is a non-profit policy institute that develops and advocates policies that promote universal, ubiquitous and affordable access to communications technology, including more robust mobile market competition.

² The LNP Alliance is a consortium of small and medium-sized providers that currently consists of Comspan Communications, Inc., Telnet Worldwide, Inc., the Northwest Telecommunications Association ("NWTa"), and the Michigan Internet and Telecommunications Alliance ("MITA"). The LNP Alliance is focused on ensuring that the LNPA selection process takes into account the concerns of its S/M provider members and other similarly situated providers.

³ The LNP Alliance member companies have just begun their review of the public MSA and the outside attorneys and consultants have also not reviewed every section of the MSA's 2,800 page, including attachments. As our review continues, we may be bringing further issues to the Commission's attention.

Ms. Marlene H. Dortch
May 17, 2016
Page 2 of 8

its terms and before consumers are required to pay the costs of the LNPA Transition. We therefore urge the Commission to adopt these changes to the MSA prior to approving it.⁴

The attached document contains a number of specific changes to the MSA recommended by the Parties. By this letter, the Parties would like to raise some broader policy concerns about the LNPA Transition and draw attention to certain of the recommended changes attached hereto.

The IP Transition. The most critical omission from the MSA and from the LNPA Transition in general is that, as we have repeatedly noted, there has been no effort to incorporate the IP Transition into the LNPA Transition. Given the almost industry-wide demand to move the IP Transition forward rapidly, the Parties have repeatedly urged that the IP Transition and ENUM routing and capabilities be incorporated into the new NPAC being built by iconectiv as an integral part of the LNPA Transition. For LNP Alliance members and smaller carriers in general, the greatest cost savings will derive from completing the IP Transition, significantly more so than the savings that might accrue from the LNPA Transition. And for consumers, it is critical that the Commission maintain a single common repository for porting *all* numbers to ensure both competition and consistency among carriers, whether small or large, wireless or wireline, rural or nationwide.

The LNPA and IP Transitions are interdependent because both *should be* implemented concurrently. Although the Transition Oversight Manager ("TOM"), the North American Portability Management LLC ("NAPM"), iconectiv, and others have failed to recognize it, the steady migration towards IP traffic exchange across the industry demands that the IP Transition be implemented during the LNPA Transition. Every day, more and more voice communications traffic is originated and terminated in IP format and, every day, the need for carriers to exchange IP routing information for the exchange of IP-based voice traffic becomes more critical.

Further, emergency response organizations like the National Emergency Number Association ("NENA") have developed frameworks for the exchange of multimedia traffic between subscribers and Public Safety Answering Points ("PSAPs") that simply will not be possible to implement in the absence of TN-based IP routing information exchange between service providers. When a number is ported, that information must come from the NPAC database if the NPAC is to remain the central, neutral, and holistic repository for the information required by service providers to support multimedia communications between subscribers and PSAPs, among others.

As the examples cited above show, the IP Transition is happening now and, therefore, the new LNPA will be compelled to address issues relative to the IP Transition during the LNPA Transition. Any plan to treat each Transition as a separate and disassociated initiative is

⁴ While the Commission Staff have suggested that they might limit their review to neutrality and other narrow issues, we believe that the issues raised herein must be addressed in order to rectify the fact that smaller carriers and consumers have largely been excluded from the development of the MSA by NAPM and iconectiv to date.

nonsensical, since the two are inextricably intertwined in terms of timing, participants, technology, and application. To build a new NPAC database at this stage that does not incorporate the IP Transition would be like rolling a Model T off the assembly line when you should have built a Tesla. If the IP Transition is not incorporated, the LNPA Transition will actually be responsible for *delaying* by three years or perhaps longer the implementation of the IP Transition. The costs of that delay would more than negate any prospective savings from the LNPA Transition. An MSA that does not transparently anticipate and incorporate IP number porting also raises serious questions about a hidden agenda (or decision) by the NAPM and/or Ericsson to derail the current statutory mandate and FCC policy in favor of a single, central NPAC that ensures a level playing field for all competitors.

As such, the LNPA Transition must recognize the coexistence of the IP Transition and, at a minimum, anticipate the potential impact of related NANC Change Orders on the LNPA Transition timeline. To date, there has been no mention whatsoever of these interdependencies by the TOM, NAPM, or iconectiv. In light of that, it is not surprising that there is also no mention whatsoever of the IP Transition in the MSA or its 2,500 pages of attachments. The Parties have been deeply disappointed in these omissions given the continuing progress of the ATIS/SIP Forum IP-NNI Task Force, the ATIS Testbeds Focus Group, and others to adopt IP-enabling standards as early as 2017. The TOM and iconectiv need to be more fully engaged in these initiatives if they expect to be able to respond to potentially complex NANC Change Orders on a timely basis.

The LNP Alliance members will not receive material cost reduction benefits from the LNPA Transition, while the risk of business disruption to their operation looms large. At the same time, the IP Transition, which holds the promise of far higher economic benefit for all carriers as well as consumers seems to be subordinated to it, if not halted altogether. While only large providers, such as those comprising NAPM, will gain from a significant reduction in the cost of transitioned LNPA services, the benefits of the IP Transition including the retirement of archaic and inefficient TDM interconnection facilities, the introduction of multimedia services across carriers, and vastly improved emergency services will be held at bay. The TOM has been publicly reticent and, ultimately, has failed to address this interdependency in any of the underdeveloped timelines thus far issued. The LNP Alliance and OTI, among others, are therefore deeply concerned that it has also failed to plan for it.

When it ultimately approves the MSA, the Commission should also indicate to NAPM and iconectiv that future LNPA Transition planning must integrate the IP Transition as an integral part of future planning and timelines. The Commission needs to focus more attention on the integration of the IP Transition into the LNPA Transition and the future of a neutral, nondiscriminatory NPAC. Whether through open and transparent workshops or further proceedings, the Commission should bring immediate attention to these issues in the wake of its decision on the MSA.

Testing, Migration and Other Transition Timelines. The LNP Alliance has been saying for years that there is potentially more risk than reward in the LNPA Transition if there is not adequate testing, which would likely lead to operational failures.⁵ The LNP Alliance has advocated continuous engagement by the Commission to ensure that testing and planning is adequate: “The LNP Alliance also encourages the Bureau to stay fully engaged in this process to ensure that smaller carriers have input into the process at every stage, including input into testing processes, enforcement mechanisms, and the role of the Manager and LNPA Working Group.”⁶ Recent developments suggest that there is an urgent need for such close supervision.

Between January and April of this year, the TOM cut the intervals for the two critical intervals for testing and data migration during the LNPA Transition by more than half. *See* attached TOM January and April timelines. Yet in releasing these drastically reduced testing and migration intervals, the TOM provided no public explanation whatsoever as to why it was cutting these intervals in half.

The LNP Alliance maintains that the underdeveloped timeline for the LNPA Transition as published by the TOM is both incomplete and vague. Further, the shifting and retraction of even the most basic task groups defined within the timeline, such as the testing schedule mentioned above, demonstrate that the timeline itself has limited use for the industry in terms of the budgetary and human resource planning that will be necessary for companies to prepare for the LNPA Transition.

It therefore now appears that the TOM is getting caught up in the false deadlines of the NAPM which is supervising the TOM on the LNPA Transition. This is the only explanation as to why the TOM would unduly compress critical testing time frames with no explanation or comment as to why it was doing so. If in January much longer testing and data migration intervals were deemed necessary, nothing changed between January and April to justify cutting those intervals in half.⁷ It appears that the TOM is striving to meet artificial deadlines rather than building the Transition from the ground up in terms of the necessary time for each phase. The Commission should require that the TOM publicly file a comprehensive Gantt chart, including operational interdependencies and timeline risks posed by potential testing failures in all performance categories—since this is a new and completely untested system—and generally make details of the Transition more readily available to smaller carriers and the public at large.

NAPM Dues Structure. NAPM, by design, has played a significant role in mapping out the LNPA Transition and, under the MSA, takes on a wide variety of critical roles in managing

⁵ *See, e.g.*, Comments of the LNP Alliance on the North American Number Portability Management LLC Transition Plan and the Draft Voting Trust Agreement, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 2 (May 21, 2015)

⁶ *Id.*

⁷ The LNP Alliance will be requesting more information from the TOM as to why these intervals were suddenly cut without explanation.

iconectiv – in essence making itself judge, jury and the final court of appeal concerning the future of consumer number porting. These roles are discussed in more detail in the attached detailed outline of the Parties' recommended changes to the MSA. However, NAPM should not continue to play such an integral role unless it becomes more representative of the industry and other stakeholders, including representing smaller carriers, state regulators, and consumer advocates. The current arrangement represents an inappropriate delegation of the NANC's duties as a Federal Advisory Committee to an organization that clearly lacks the requisite diversity.⁸ NAPM is currently comprised exclusively of member companies with over \$1B in revenues. The Commission should require the NAPM to adopt a more open dues structure with lower dues levels for smaller and mid-sized carriers. In addition, NAPM should include a consumer representative that could be nominated by the National Association of State Utility Consumer Advocates and a representative of the state commissions nominated by NARUC. This increased diversity would make NAPM sufficiently representative to continue in its current roles.

Transparency of the MSA. The Commission should continue to make the MSA a more transparent document. As it stands now, LNP Alliance member business representatives could be asked to sign an agreement that is replete with redacted provisions that the signing executive cannot review. In the current Public Version of the document, there are a large number of definitions that are redacted. As such, to a business executive reviewing the MSA, the document will be seeded with a number of defined terms whose definitions are redacted. This makes no sense. And these are just a few of the redacted terms that will remain a mystery to the signatories. The Commission should permit any potential business User to review at least the Confidential and Highly Confidential portions of the MSA. They should be permitted to review them now, while the MSA is still subject to revision. If there needs to be protections such that certain Neustar personnel cannot review competitive bidding information, those protections should be narrowly tailored to that company and those personnel. As it stands now, to protect a future putative Neustar bidding process, hundreds of non-NAPM Users who will actually be committing to the terms of the MSA are being blocked from seeing many of the terms of their own agreements. The Commission should rationalize this process and improve the access of future NPAC Users to the MSA, including its attachments.

Ericsson/Telcordia/iconectiv Neutrality. The LNP Alliance has previously expressed concerns about the neutrality of iconectiv, given its relationship with Ericsson, one of the largest manufacturers of equipment for the wireless industry. The Parties have also recently provided concerns about Telcordia's Code of Conduct which, along with the Voting Trust, is supposed to satisfy concerns about Telcordia and iconectiv's neutrality.⁹ Telcordia responded to our

⁸ The Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

⁹ Letter from the LNP Alliance, Public Knowledge, and OTI at New America to Marlene H. Dortch, Secretary, Federal Communications Commission, Telephone Number Portability, *et al.*, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149 (April 23, 2016) ("Joint Ex Parte").

concerns in a separate ex parte.¹⁰ Both ex partes are attached hereto. Portions of that Telcordia Ex Parte provided useful background on Telcordia's most recent round of revisions to the Code of Conduct, explanations that would have been helpful when Telcordia first filed those revisions.

The Parties, however, continue to have concerns about iconectiv's neutrality even in the wake of Telcordia's most recent explanations. The Code of Conduct, due to a revised footnote in paragraph 4, would permit employees, officers, and directors of iconectiv (a well as dedicated employee's of its subcontractors) to hold up to a 1% financial interest in a telecommunications service provider ("TSP") or telecommunications equipment manufacturers.¹¹ Telcordia defends this threshold by comparing it to Neustar's 5% threshold,¹² but Neustar is an independent entity and Telcordia is not. There should not be employees, officers or directors of iconectiv or its subcontractors that hold, for example, a 1% interest AT&T, Verizon, or for that matter, Ericsson (with the exception of the Ericsson directors). They can own mutual funds but, given that iconectiv is wholly owned by Ericsson, they should not be unduly influenced by any significant ownership interests in TSPs or equipment manufacturers.¹³

In addition, as to paragraph 8, the Parties remain concerned that many iconectiv employees will have Ericsson pensions.¹⁴ If the Commission's rules require that the LNPA not be linked to an equipment manufacturer, why would it be staffed up with Ericsson employees? To the extent the Selection Order did not see the harm in having Ericsson pension-holders on the LNPA,¹⁵ we respectfully disagree with the Commission. With all the potential employees in the country that could staff the LNPA, why under the current circumstances would it be staffed up with pensioners of Ericsson, a major telecommunications equipment manufacturer? We also remain concerned that the Code of Conduct need not be implemented for 270 days, and that provider data could be transferred within that window.¹⁶ Either the Code of Conduct is necessary and is meaningful and must be fully implemented, or it begins to look like iconectiv (and to a lesser extent the Commission) is not taking the separation from Ericsson seriously.¹⁷

¹⁰ Letter from John T. Nakahata, Counsel to Telcordia Technologies, Inc. dba iconectiv, to Marlene H. Dortch, Secretary, Federal Communications Commission, Telephone Number Portability, *et al.*, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 2-3 (May 4, 2016) ("Telcordia Ex Parte").

¹¹ Joint Ex Parte at 3.

¹² Telcordia Ex Parte at 2.

¹³ Telcordia's reference to 47 C.F.R. 52.12(a)(1)(i)(A) is misleading. This relates to when an entity will be considered an affiliate of a TSP. Here, we are dealing with a company that is already known to be wholly owned by a major equipment manufacturer so Section 52.12(a)(1)(i)(A) does not apply. It is also not relevant that the current independent directors might not have ownership interests. The Code of Conduct should make sense beyond the term of individual directors.

¹⁴ Joint Ex Parte at 3.

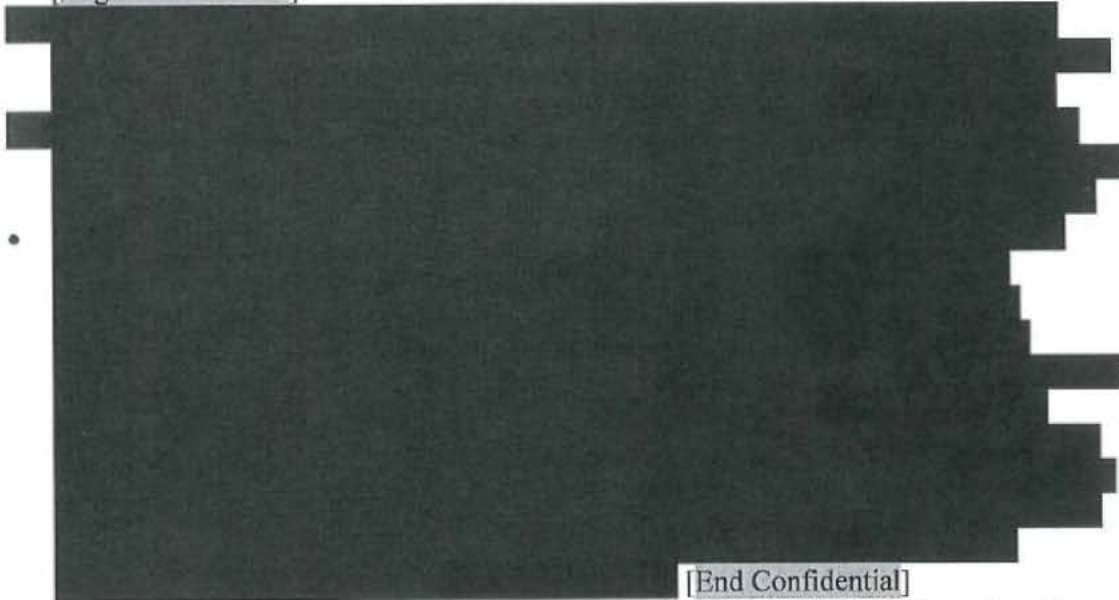
¹⁵ *Selection Order* ¶ 186 n.644.

¹⁶ Joint Ex Parte at 3.

¹⁷ Telcordia claims that "other provisions of the contract protect service providers' confidential information against unnecessary disclosure." Telcordia Ex Parte at 3. But if that were the case, the Code of Conduct would not be necessary at all. Again, if the Code is necessary to ensure separation from Ericsson, it should be fully implemented before data is transferred.

Revisions to the MSA. The Parties have provided detailed revisions to the MSA. See attached revisions. We look forward to discussing these revisions with the Commission, and potentially iconectiv and NAPM. The revisions represent constructive revisions that will improve the MSA and facilitate a smoother LNPA Transition, particularly for smaller carriers. Among the revisions suggested are the following:

[Begin Confidential]



- **Certain provisions could permit the broad sharing of data derived from User Data** to parties that were not intended to receive such data. Section 6.1.2.2.4.4
- In the Definitions section, **the definition of “Telecommunications Service Provider,” is far too broad** and needs to be revised and narrowed.

These are just a few of the many MSA revisions the Parties have identified that would improve the MSA and, in many cases, will eliminate significant future complications during the implementation of the LNPA Transition. The LNPA Alliance and OTI submit these revisions for the Commission’s consideration and we look forward to discussing them further with the Bureau, as well as each of the Commissioners and/or their advisors in the near future.

Ms. Marlene H. Dortch
May 17, 2016
Page 8 of 8

As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/ James C. Falvey

James C. Falvey

cc: Diane Cornell
Kris Monteith
Ann Stevens
Sanford Williams
Marilyn Jones
Michelle Sclater
Amy Bender
Nick Degani
Rebekah Goodheart
Travis Litman
Neil Dellar
Michael Calabrese
Dave J. Malfara, Sr.